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The 2012 Amendments to Singapore's Evidence Act: More Questions than Answers as Regards Expert Opionion Evidence?

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The 2012 Amendments to Singapore's Evidence Act: More Questions than Answers as Regards Expert Opinion Evidence?

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ABSTRACT

Singapore amended the expert opinion evidence provisions in its Evidence Act (EA) in 2012. The criteria for admissibility have been broadened, but the courts are now also expressly given the discretion to exclude relevant expert opinion evidence if it is 'in the interests of justice'. This article explains why the 2012 amendments have raised more questions than answered them. First, Parliament did not appear to have properly appreciated the distinction—as conceptualised by the EA—between legal and logical relevance and relevance and admissibility. Second, it did not appear to have appreciated the distinction between general and specific relevance. Third, the introduction of the judicial discretion is a concept that neither comports with the common law position nor coheres with the EA. Fourth, whether there should have been continued applicability of the 'ultimate issue rule' could have been clarified. At bottom, Parliament did not demonstrate a keen understanding of the conceptualisation, structure, and principles of the antiquated EA. A framework for determining relevance and admissibility of evidence that is in accordance with the EA is thus proposed. As a number of Commonwealth jurisdictions share similar legislation to the EA, this article may be of interest to such jurisdictions as well.

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1. Introduction

(A) Establishing the Context: A Rare Set of Reforms to the Antiquated Evidence Act

Singapore's Evidence Act (EA),[1] which 'was almost entirely modelled on the Indian Evidence Act of 1872',[2] underwent significant amendments in 2012.[3] Notably, this was only the third such exercise since the statute's original enactment in 1893.[4] The 2012 amendments brought about five main (and rather distinct) changes, but in the interests of focus I will only be discussing in this article the changes made to the rules on expert opinion evidence.[5] While these changes appear to have been well received by the legal community,[6] it is submitted that they may have raised more questions than answered them, and this article seeks to highlight some of the potential problems that the Singapore courts (or less likely, legislature) ought to resolve in due course.

Before proceeding further, it should be noted that the 2012 amendments were spearheaded by the Ministry of Law, which had conducted a visibly public consultation exercise in the lead-up to the draft amendments.[7] Specifically for expert opinion evidence, the Ministry had also received input from a fairly comprehensive report prepared by a Law Reform Committee (LRC Report). The LRC Report was commissioned by the Singapore Academy of Law and chaired by Vinodh Coomaraswamy SC (who has since been elevated to the High Court Bench as a Judicial Commissioner).[8] It may therefore come as a surprise that despite the wide array of input (which is not always a given for Singapore law reform projects),[9] the 2012 amendments have (as is submitted anyway) missed the mark, particularly with respect to expert opinion evidence.

1 Evidence Act (Cap 97, 1997 Rev Ed) (Singapore).
2 SC Jeffrey Pinsler, *Evidence and the Litigation Process* (LexisNexis, 2010), 18.
3 Act 4 of 2012—Evidence (Amendment) Act 2012 (Singapore).
4 *Evidence and the Litigation Process* (n 2), 18–20.
5 The other four main changes involved extending legal professional privilege to in-house legal counsel; aligning the rules for admission of computer output evidence with those governing other forms of evidence; broadening the categories of admissible hearsay evidence for both civil and criminal proceedings (including computer output evidence); and removing a provision that permitted the credit of a rape victim to be impeached by proof of immoral character: Ministry of Law, *Proposed Amendments to the Evidence Act*. http://app2.mlaw.gov.sg/News/tabid/204/Default.aspx?ItemId=604 (accessed 2 February 2013).
6 The amendments were largely met with approval in Parliament (many of its members being practicing lawyers): *Singapore Parliamentary Debates Official Report*, 14 February 2012, vol 88. See also Opening Address of the Honourable the Chief Justice at the Litigation Conference 2013, [27]–[28].
7 Ministry of Law, *Public Consultation on Proposed Amendments to the Evidence Act*. http://app2.mlaw.gov.sg/News/tabid/204/Default.aspx?ItemId=579 (accessed 2 February 2013).
8 Vinodh Coomaraswamy SC, *Report of the Law Reform Committee on Opinion Evidence (October 2011)*. http://www.sal.org.sg/digitallibrary/Lists/Law%20Reform%20Reports/Attachments/34/01%20LRC%20on%20Opinion%20Evidence%20%28FINAL%29.pdf (accessed 2 February 2013).
9 It has to be said, however, that there was also a wide-ranging consultative process that preceded the recent enactment of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (Singapore), which had significantly changed many of the previous rules on and assumptions underlying our law on criminal procedure: Melanie Chng 'Modernising the Criminal Justice Framework' [2011] *Singapore Academy of Law Journal* 23, 33.

But why was there a perceived need for reforming the law on expert opinion evidence in the first place?

(B) Comparing the Old and New Provisions Governing Expert Opinion Evidence

The Ministry of Law had helpfully summarised the rationale and limitations of the EA's previous treatment of expert opinion evidence in the following terms:

> In Singapore, the admission of expert opinion is regulated by section 47 of the EA. Generally, the rationale for regulating and controlling the admission and use of expert opinion is to minimise the inherent danger that tribunals of fact … will place undue emphasis on expert opinions and abdicate their ultimate responsibility to draw their own conclusions on all the relevant facts … there is also immense value in receiving objective, unbiased and reliable expert evidence on scientific and technical issues not within the common understanding of the trier of fact … the anachronistic wording of section 47 admits only opinions on five areas of specialised knowledge … It may be asked if such a strict restriction on the admission of expert opinion is necessary, given especially that in Singapore there is no need to protect a jury from powerful and confusing expert opinions; professional judges are capable of comprehending the subtleties of expert evidence and according the proper weight to such evidence.[10]

At this juncture, it may be helpful to compare what section 47 of the EA looked like before and after the 2012 amendments. This is what section 47 of the EA looked like before the amendments:

> 47.—(1) When the court has to form an opinion upon a point of foreign law or of science or art, or as to the identity or genuineness of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to the identity or genuineness of handwriting or finger impressions, are relevant facts.
>
> (2) Such persons are called experts.

And this is what section 47 looks like after the amendments:[11]

> 47.—(1) Subject to subsection (4), when the court is likely to derive assistance from an opinion upon a point of scientific, technical or other specialised knowledge, the opinions of experts upon that point are relevant facts.

[10] Ministry of Law, *Consultation Amendments to the Evidence Act*. http://app2.mlaw.gov.sg/LinkClick.aspx?fileticket=W7niXkDfPC8%3d&tabid=204 (accessed 2 February 2013) [8]–[9]. See also *Evidence and the Litigation Process* (n 2), 277–91.

[11] It should be noted that the other EA provisions that pertain to opinion evidence (sections 48–53), most of which have to do with lay opinion evidence, were all not affected by the 2012 amendments.

(2) An expert is a person with such scientific, technical or other specialised knowledge based on training, study or experience.

(3) The opinion of an expert shall not be irrelevant merely because the opinion or part thereof relates to a matter of common knowledge.

(4) An opinion which is otherwise relevant under subsection (1) shall not be relevant if the court is of the view that it would not be in the interests of justice to treat it as relevant.

As can be seen from a quick comparison of the provisions, the most apparent changes, vis-à-vis the new subsections of section 47 respectively, are:

(1) The specific categorisation approach (with regard to the areas of relevant expertise) has been replaced with a more general approach with likelihood of assistance to the court as the new touchstone for relevance.
(2) The specific requirement of special skill has been replaced by a broader requirement of training, study, or experience in the knowledge in question.
(3) Expert opinion evidence based on common knowledge is expressly declared as not being an impediment to relevance.
(4) The courts have now been expressly conferred discretion to exclude relevant evidence (i.e. expert opinion evidence in particular).[12]

(C) Overview of the Problems Unresolved or Brought About by the 2012 Amendments

It is clear that the 2012 amendments, consistent with its original aims as set out by the Ministry of Law, broadened the scope of admissibility for expert opinion evidence. Indeed, this enlargement occurred for the amended hearsay provisions as well, which essentially relaxed the hearsay rule by increasing the number of statutory exceptions to the rule.[13] At the same time, for these two types of evidence—and these two types of evidence only—the courts are now expressly conferred the discretion to exclude relevant evidence (thus admissibility can be narrowed if necessary) if 'the court is of the view that it would not be in the interests of justice to treat it as relevant'.[14] So what are the issues that have arisen then? In summary, the main problems, some unresolved by and some created by the 2012 amendments, are that:

(1) It is still unclear if the EA defines 'relevance' as logical or legal relevance, notwithstanding the statute's distinctive feature of being

[12] Something similar was done for the hearsay provisions that were amended: *Proposed Amendments to the EA* (n 5).
[13] *Consultation Amendments to the Evidence Act* (n 10). Expert opinion evidence, of course, shares 'a common foundation' with hearsay evidence: *Evidence and the Litigation Process* (n 2), 273.
[14] Section 32(3) of the EA, which is the main hearsay provision in the EA, uses this phrase as well.

a set of 'inclusionary' rather than 'exclusionary' rules.[15] Concomitantly, it is also still unclear if the EA only defines 'relevance' but does not actually go a step further to mandate admissibility by the court.[16]

(2) It is also still unclear if Part I of the EA should be interpreted as bifurcating relevance into general relevance and specific relevance, in that any given piece of evidence must satisfy both the general relevancy (sections 6–11 of the EA) and specific relevancy (sections 12–57 of the EA) provisions before it can be admissible.[17]

(3) It is unclear what 'interests of justice' entails and whether it uses the same test as and/or is based on the same justifications as the common law exclusionary discretion.[18] This discretion, while of considerable pedigree in other common law jurisdictions, has barely been explicated in Singapore even though it has been invoked from time to time. Concomitantly, it is also unclear if the courts have the discretion to exclude relevant evidence that is neither expert opinion nor hearsay evidence and, if so, whether there can be a basis and principle for this power that is consistent with the EA.

These three problems are all closely connected in that they all concern the question of relevance under the EA. However, there is one other related but distinct issue that remains unresolved even after the 2012 amendments (and which was alluded to by both the Ministry of Law and LRC Report) and merits at least brief discussion.[19] Specifically:

(4) It is still unclear whether the 'ultimate issue rule' has any application in Singapore—that is to say, whether an expert witness (instead of the trial judge) is permitted to (in effect) make a finding with regard to a

[15] This means that the EA codifies exceptions to the common law 'exclusionary' rules, rather than the 'exclusionary' rules themselves. See generally Robert Margolis 'The Concept of Relevance: In the Evidence Act and the Modern View' [1990] *Singapore Law Review* 11, 24; *Report of the Law Reform Committee on Opinion Evidence* (n 8), 6–10.

[16] See *Evidence and the Litigation Process* (n 2), 368–70.

[17] Ibid, 35–42; Tan Yock Lin 'Stephen's Hearsay – Does It Matter?' [1991] Singapore Law Review 12, 128–30.

[18] See generally Tan Yock Lin 'Sing a Song of *Sang*, a Pocketful of Woes?' [1992] *Singapore Journal of Legal Studies* 2, 365; Jeffrey Pinsler SC, 'Whether a Singapore Court Has a Discretion to Exclude Evidence Admissible in Criminal Proceedings' [2010] *Singapore Academy of Law Journal* 22, 335; Chen Siyuan 'The Judicial Discretion to Exclude Relevant Evidence: Perspectives from an Indian Evidence Act Jurisdiction' [2012] *International Journal of Evidence and Proof* 16, 398; Chen Siyuan and Nicholas Poon 'Reliability and Relevance as the Touchstones for Admissibility of Evidence in Criminal Proceedings' [2012] *Singapore Academy of Law Journal* 24, 535.

[19] There is actually one other issue: whether there is supposed to be a different (i.e. more lenient) approach for expert opinion evidence in medical negligence (or indeed, even other kinds of professional) disputes, and whether this difference in treatment can be sustained in law and/or as a matter of principle: see *Evidence and the Litigation Process* (n 2), 306–9; Disa Sim '*Dr Khoo James v Gunapathy d/o Muniandy*: Implications for the Evaluation of Expert Testimony' [2003] *Singapore Journal of Legal Studies* 2, 601, 603–8. However, as it is truly a distinct issue from the other four issues raised in this article, it will not be included here.

fact in issue in a dispute.[20] Notably, in most other common law jurisdictions (such as England and Australia), this rule has effectively been abolished or ignored by the courts.[21] However, there is recent authority in Singapore to suggest that the rule is still well and alive here, though on balance it may well be more honoured in breach than in observance.

The four problems listed above will now be considered in turn.

2. The Problems Examined

(A) The Distinctions between Logical and Legal Relevance and Admissibility and Relevance

The LRC, and by extension the Ministry of Law, was very much aware of some of the fundamental constraints that have been presented by the EA since its enactment. One such fundamental constraint was that:

> The [EA] was drafted on Stephen's[22] idiosyncratic view that there should be no distinction between the concepts of relevance and admissibility. Therefore the [EA] attempts to define relevance as an intrinsic, ever-present connection between two facts rather than accepting that it is a process leading to a conclusion … Modern evidence law makes no attempt in this way to define what is 'relevant'. The word 'relevant' is today used not in this closed sense but in a broad general sense to mean 'rationally probative'. What is relevant … necessarily varies from case to case and issue to issue and is not susceptible to being enumerated in legislation.[23]

Another such fundamental constraint was that:

> The second difference between the [EA] and modern evidence law is that the [EA] admits only evidence which [it] renders admissible (or 'relevant' in the language of the [EA]) … the [EA] establishes the law of evidence in Singapore as a series of *inclusionary rules* with a few exclusionary rules bolted on rather than as a set of exclusionary rules … Unless evidence comes within an express inclusionary rule in the [EA], therefore, that evidence cannot be received by the court … Modern evidence law is based on the principle that all relevant evidence is freely admissible subject only to

[20] See *Evidence and the Litigation Process* (n 2), 292–93; *Report of the Law Reform Committee on Opinion Evidence* (n 8), 2.

[21] Colin Tapper, *Cross & Tapper on Evidence* (Oxford University Press, 2010), 538–39; Paul Roberts and Adrian Zuckerman, *Criminal Evidence* (Oxford University Press, 2010), 490–93; Adrian Keane, James Griffiths, and Paul McKeown, *The Modern Law of Evidence* (Oxford University Press, 2010), 542–43.

[22] This refers to Sir James Fitzjames Stephen, the draftsman of the Indian EA.

[23] *Report of the Law Reform Committee on Opinion Evidence* (n 8), 7. See also *Cross & Tapper on Evidence* (n 21), 65–6; *Criminal Evidence* (n 21), 100–2; *The Modern Law of Evidence* (n 21), 20–6.

> exclusionary rules which have been carved out to ensure reliability, to prevent unfair prejudice or to uphold an important principle of public policy.[24]

Indeed, whether or not Stephen fully appreciated the distinctions between legal and logical relevance and admissibility and relevance has always been of some debate, though it would seem that the EA is based on legal rather than logical relevance.[25] In that sense, the EA is clearly different from the common law position in terms of how evidence is admitted; under the common law, the admissibility sequence is: Is the evidence (logically) relevant? Is the evidence engaged by an 'exclusionary' rule? Is the evidence nevertheless recognised as an exception to the applicable exclusionary rule?[26] In contrast, under the EA, evidence is admissible as long as it satisfies the test for relevancy under the EA, without more.[27]

But there is also a third fundamental constraint presented by the EA that has to be understood before any meaningful reform can take place. Quite apart from the fact that statutory law, by definition, takes precedence over case law, there is a particular provision in the EA that has proven to be rather vexing for a very long time. Section 2(2), which has since been repealed in many other Indian EA jurisdictions[28] but remains in Singapore's EA, states that 'All rules of evidence not contained in any written law, so far as such rules are inconsistent with any of the provisions of this Act, are repealed.' Essentially, this meant (and still means) that 'Singapore courts cannot rely on (the ever-changing) common law rules on evidence unless those rules are consistent with the (essentially static) [EA].'[29]

As a result of this stifling prohibition, section 2(2) of the EA 'was virtually completely ignored or glossed over by Singapore courts in evidence law decisions for more than a century … With the passage of time, the resultant unprincipled importation of common law concepts created increasing contradictions between many provisions in the [EA] and Singapore case law.'[30] This undesirable pattern only effectively came to a halt in 2008, when then Chief Justice Chan Sek Keong declared in *Law Society of Singapore* v. *Tan Guat Neo Phyllis* (*Phyllis Tan*) that section 2(2) of the EA could no longer be ignored but instead had to be properly adhered to.[31] In making this declaration, the court must also have meant that the EA had to be interpreted in a way that was internally consistent, in meaning, principle, and structure. At any rate, the upshot of the aforementioned fundamental constraints then is that any treatment of the EA—be it judicial interpretation or legislative amendment—has to be prefaced with the

[24] *Report of the Law Reform Committee on Opinion Evidence* (n 8), 9 (emphasis in original).
[25] Sing a Song of *Sang* (n 18), 371–73.
[26] *Criminal Evidence* (n 21), 99.
[27] *Evidence and the Litigation Process* (n 2), 38–43.
[28] 'The Judicial Discretion to Exclude Relevant Evidence' (n 18), 400.
[29] Ibid.
[30] Ibid. See also Jeffrey Pinsler 'Approaches to the Evidence Act: The Judicial Development of a Code' [2002] *Singapore Academy of Law Journal* 14, 365; Chin Tet Yung 'Remaking the Evidence Code: Search for Values' [2009] *Singapore Academy of Law Journal* 21, 52 at 53–5.
[31] [2008] 2 SLR(R) 239 (Court of Three Judges (Singapore)) [117]. This was affirmed in subsequent cases such as *Lee Chez Kee* v. *Public Prosecutor* [2008] 3 SLR(R) 447 (Singapore Court of Appeal (SCGA)) [116] and *Muhammad bin Kadar* v. *Public Prosecutor* [2011] 3 SLR 1205 (SGCA) [51].

exercise of determining what relevance and admissibility in the EA actually entails, before recourse to common law developments can take place. For the larger part of history, this simply has not been done in any meaningful way by the Singapore courts or legislature.[32]

How, then, have the 2012 amendments fared in terms of resolving the meaning of relevance and admissibility in the EA, in accordance with the EA? The records of the parliamentary debates, unfortunately, are bereft of clues in this regard[33] and the statutory text is all there is for our evaluation. At first blush, it would seem that the amended section 47(1) (which should also be read with the new section 47(3)), in broadening the test for relevance (from a categorisation approach to the touchstone of likelihood of assistance to the court), has conceptualised relevance in a logical sense by allowing the judge, rather than the EA, to determine relevance on a case-by-case basis—the only limiting (and therefore legal) mechanism is that the evidence must be with regard to 'scientific, technical or other specialised knowledge'.[34] However, as mentioned, the EA adopts an 'inclusionary' approach to the common law 'exclusionary' rules, and in so far as the amended section 47 takes cognisance of that (by defining what is relevant rather than what is *prima facie* irrelevant), it is odd that amongst all the 'exclusionary' rules in the EA, only expert opinion now defines relevance as broadly as it does (the discretion in the new section 47(4) would be addressed soon enough). The necessary inference to be drawn is that expert opinion evidence is considered potentially more useful (or perhaps instrumental) than other types of evidence constrained by 'exclusionary' rules in the disposition of cases, given that Parliament did not mind risking being over-inclusive than under-inclusive in the judicial reception of such evidence. Indeed, the introduction of section 47(3) (which states that common knowledge is not a bar to an opinion being relevant) indicates confidence in the judiciary to attach the appropriate caution to expertise that may appear less necessary than it is.

[32] The closest attempt is found in the *Report of the Law Reform Committee on Opinion Evidence* (n 8), 6–10. See also *Basil Anthony Herman* v. *Premier Security Co-operative Ltd* [2010] 3 SLR 110 (SCGA) [24]–[26]: 'every litigant has a general right to bring all evidence *relevant* to his or her case to the attention of the court. This general right is so fundamental that it requires no authority to be cited in support of it ... The general right is, of course, subject to specific limits … A litigant only has the right to adduce *relevant* evidence, as defined by the [EA] and other applicable rules; irrelevant evidence is inadmissible and will not be considered by the court. The adduction of relevant evidence must, as far as practicable, take place in accordance with the rules of procedure whose purpose is to ensure the *fair*, economical, swift and orderly resolution of a dispute. Finally, a litigant is prohibited from manipulating the court's machinery to further his ulterior or collateral motives in an abusive or oppressive manner … a trial judge must not only be guided by the applicable rules and decisions, but must look beyond the mechanical application of these rules and decisions, and carefully assess the interests at stake in every case to ensure that a *fair* outcome is reached through the application of *fair* processes' (emphasis in original).

[33] In fact, the records would suggest that Parliament was either not aware of the difference between legal and logical relevance or placed no importance on it whatsoever.

[34] Notably, under the old section 47(1) of the EA, 'science or art' and 'specially skilled' were defined very broadly by the courts: *Evidence and the Litigation Process* (n 2), 281–84.

Of course, inclusiveness presupposes that relevance is equated with admissibility (automatic or otherwise), and in this connection, it is noteworthy that the amended section 47 only uses the language of relevance and does not mention admissibility at all. Indeed, the phrase 'An opinion which is otherwise relevant under subsection (1) shall not be relevant' seems to equate relevance with admissibility.[35] Without elaborating on the problems of the new section 47(4) at this point, the fact that a court needs to be conferred discretion to reverse the relevance of a piece of (expert opinion) evidence that is found relevant under the EA would arguably suggest that the fulfilment of relevance must lead to admissibility; otherwise, the conferral of this discretion would be completely unnecessary as the evidence need not be excluded but may just not be admitted since there is no automatic admissibility. On another view, such discretion can coherently coexist with the notion that the EA does not mandate admissibility, particularly in instances where a piece of evidence has doubtful relevance (though this is precisely where the concept of weight comes in, which will also be addressed later). Nevertheless, there is actually another logically prior and connected question to consider, to which we now turn to.

(B) The Distinction between General Relevance and Specific Relevance

One of the enduring and great mysteries of the EA is why Stephen saw fit to divide the relevancy provisions in the EA into general and specific categories. The specific relevancy provisions (sections 12–57 of the EA) roughly correspond to the common law 'exclusionary' rules expressed in 'inclusionary' terms,[36] but the purpose and ambit of the general relevancy provisions (sections 6–11 of the EA) and their relationship with the specific relevancy provisions remain controversial. For instance, does a piece of evidence have to satisfy both the general and specific relevancy provisions before it can be considered relevant (and admissible)?[37] The case law on this is rather divided, and in any event, all of them pre-date *Phyllis Tan* and would probably not have considered the EA in its proper terms.[38] There is no particular rule of statutory construction that applies to break this deadlock either. Compounding this problem is that some cases have interpreted some of the general relevancy provisions as 'inclusionary' expressions of the common law 'exclusionary' rules as well. The classic example, but by no means the only

[35] However, as pointed out in ibid 372, '[Section] 5 of the EA, the governing provision on admissibility, does not compel the court to admit relevant evidence. The section points to the different categories of admissible evidence which the parties may rely on and does not deprive the court of its power to exclude such evidence.'

[36] Ibid, 39–40.

[37] See also 'The Judicial Discretion to Exclude Relevant Evidence' (n 18), 403–5.

[38] *Evidence and the Litigation Process* (n 2), 40–3; Chen Siyuan 'Revisiting the Similar Fact Rule in Singapore' [2011] *Singapore Journal of Legal Studies* 2, 553, 559–61.

example,[39] is that of the similar fact rule. It is widely accepted that this rule, which 'essentially limits the admissibility of evidence that goes not towards proving directly that an accused has committed the crime he has been charged with but towards his past conduct, and that may form a basis for inferring that the accused has committed the said crime', is found in sections 14 and 15 of the EA.[40] However, it is equally widely accepted that sections 14 and 15 only address the *mens rea* aspect of the rule, and say nothing about *actus reus*.[41] Because of this lacuna, the courts have interpreted the *actus reus* aspect of the similar fact rule to be found in section 11 of the EA, which is not specific but a general relevancy provision.[42] Section 11 states that:

> 11. Facts not otherwise relevant are relevant—
> (*a*) if they are inconsistent with any fact in issue or relevant fact;
> (*b*) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Section 11, and subsection (b) in particular, is very broadly worded and may 'give the impression that it is a residuary provision for admitting relevant facts which may not be caught by the preceding five sections [of general relevancy]'.[43] However, much as Stephen 'was aware that s 11(b) might be interpreted broadly … and indicated that this was not the intention of the section',[44] the similar fact rule cases that have abolished the boundary between the general and specific relevancy provisions continue to validate the possibility that a piece of evidence, regardless of its 'exclusionary' nature, need only satisfy one of the relevancy provisions in the EA. That the 2012 amendments to the rules on expert opinion evidence have done nothing to dispel this problem is of some concern.

To elaborate, while it is true that a court is likely to rule that expert opinion evidence that is clearly captured by section 47(1) of the EA must at least satisfy section 47(1), the first conundrum that emerges is whether that evidence must satisfy one of the general relevancy provisions in sections 6–11 of the EA as well. The second conundrum, and perhaps the more important one in terms of practical implications, is whether expert opinion evidence that does not satisfy

[39] *Evidence and the Litigation Process* (n 2), 42–3. Another example would be the hearsay rule; specifically, the *res gestae* exception that is found in section 6 of the EA.
[40] 'Revisiting the Similar Fact Rule' (n 38), 557–61.
[41] Ho Hock Lai 'An Introduction to Similar Fact Evidence' [1998] *Sing Law Review* 19, 166, 186–88. Section 14 of the EA states that 'Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant.' Section 15 of the EA states that 'When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.'
[42] 'Revisiting the Similar Fact Rule' (n 38), 563–64.
[43] *Evidence and the Litigation Process* (n 2), 55.
[44] Ibid.

section 47(1) of the EA (and section 47(2) for the matter) may nevertheless be admitted via one of the general relevancy provisions instead, given that it is conceivably unobjectionable to do so as 'exclusionary' rules do not, especially in the context of the EA, circumscribe the scope of all potentially admissible evidence—in other words one simply needs to re-characterise a piece of evidence as not being captured by an 'exclusionary' rule to bypass it.[45] In the context of expert opinion evidence, it seems plausible that one only needs to avoid labelling a piece of evidence as expert opinion to avoid engaging section 47—provided, of course, that the evidence does not engage other 'exclusionary' rules, such as (and most particularly) hearsay.[46] Indeed, while the LRC Report demonstrated its awareness of the significance of the distinctions between logical and relevance and relevance and admissibility, it did not seem to be aware of this further distinction between general and specific relevance in the EA—which may also explain why it saw a need to recommend introducing the common knowledge rule via section 47(3).[47] If it had appreciated the distinction between general and specific relevance, it would have noted that the need to statutorily introduce the non-prohibition against the common knowledge rule would have been potentially obviated by the general relevancy provisions in the EA, but there was simply no discussion of this distinction in its report. If anything, it just goes to show that the LRC—and Parliament—still do not fully appreciate the section 2(2) interface between the common law (of which the common knowledge rule entirely finds its origins) and the EA, and in effect considered common law developments as the first port of call when considering reforms for the EA.[48] But if the problems raised in this and previous section seem minor, theoretical, or even solvable, the third problem that was created by the 2012 amendments is too large to be ignored, and crucially is a direct consequence of the legislature's failure to properly consider and understand the EA's conceptualisation and arrangement of the relevancy provisions as outlined thus far.

[45] As explained, *Phyllis Tan* was a watershed decision mainly because many decisions before it had conveniently ignored the EA when it came to matters of evidence. It seems ironic then that Parliament should ignore the clarion call in *Phyllis Tan* and amend the EA without due regard of its structural and conceptual complexities and limitations. Interestingly, Chan Sek Keong, when he was Attorney-General, proposed that it would be better for the judiciary to bypass the EA altogether, instead of citing it at whim. He wrote in his seminal article ('The Criminal Process – The Singapore Model' [1996] *Sing Law Review* 17, 431, 456): 'In a jury trial relevant evidence may be withdrawn from the jury if the judge considers that its prejudicial effect outweighs its probative value. There are a number of situations where this principle is applicable. This principle should have little or no relevance in bench trials as the judge can simply give whatever weight is appropriate to the evidence. There is no need for a judge to go through the formal process of declaring the evidence inadmissible. But our courts continue to deal with such evidence in this fashion.'

[46] See also *Report of the Law Reform Committee on Opinion Evidence* (n 8), 47–67.

[47] Ibid, 6–10, 21–25.

[48] The LRC Report had largely surveyed the English, Australian, and New Zealand position in making its recommendation; as regards Singapore, it noted that there were hardly any cases that were on point: ibid, 11–25.

(C) The Chimerical Discretion to Exclude Admissible Evidence

Until the 2012 amendments, the EA was completely silent on whether the courts had the discretion to exclude evidence that were otherwise relevant (and admissible) under the EA. This may not be surprising if one considers that there is little to suggest that Stephen was aware of this concept of the judicial discretion to exclude relevance when he was drafting the Indian EA (which was essentially replicated in the EA).[49] But more importantly, even if he was aware of it, the structure and conceptualisation of relevancy in the EA as outlined above are fundamentally at odds with such a concept, no matter its established nature at common law.[50] Furthermore and most importantly, the scope and normative justification for this judicial discretion, in Singapore at least, is replete with internal contradictions and unresolved ambiguities. Two recent commentaries have already discussed these at some length,[51] but to use a striking illustration for now, the use of the discretion has most recently been justified (but certainly not always) on the basis of an exercise of the courts' inherent jurisdictional powers.[52] However, this:

> [E]ffectively presupposes that relevance under the [EA] does not amount to admissibility, but this remains a contentious point. Secondly, extreme caution is always urged in the exercise of a court's remedial justified under the auspice of inherent jurisdiction, in that the precondition is the circumstances of the case must be 'exceptional'.[53] Thirdly, such a constrictive requirement of 'exceptional' circumstances plainly does not square with the fact that … the exclusionary discretion as presently conceived can be applied expansively in the context of all common law exclusionary rules and executive improprieties, whether captured by the [EA] or otherwise.[54] Fourth, while it is probably less controversial (but not without problems) to suggest that the court's inherent jurisdiction can be invoked to prevent an abuse of the judicial process so as to preserve its moral legitimacy, [cases'] equating of inherent jurisdiction with the prevention of injustice is a substantially different and broader idea, and may constitute going one step too far (in terms of expanding what is supposed to be a narrow ambit of powers exercised pursuant to inherent jurisdiction). Fifthly, even if inherent jurisdiction is limited to the power to prevent an abuse of process, there is a reason to believe that power can actually be used to remedy entrapment issues—a paradox arises though, when one

[49] *Evidence and the Litigation Process* (n 2), 345–74; *Criminal Evidence* (n 21), 73–5.
[50] 'The Judicial Discretion to Exclude Relevant Evidence' (n 18), 400–1. See also VR Manohar (ed), *Ratalanlal & Dhirajlal's The Law of Evidence* (LexisNexis, 2012), 65–6, 80–1.
[51] 'The Judicial Discretion to Exclude Relevant Evidence' (n 18); 'Reliability and Relevance as the Touchstones for Admissibility' (n 18).
[52] *Muhammad bin Kadar* (n 31) [52]. See also *Evidence and the Litigation Process* (n 2), 345–74.
[53] *Evidence and the Litigation Process* (n 2), 363.
[54] Ibid, 359; 'Reliability and Relevance as the Touchstones for Admissibility' (n 18), 537–38.

> considers that the defence of entrapment has been categorically rejected in Singapore.[55]

But as mentioned, the judicial discretion to exclude evidence has also occasionally been justified on the basis of fairness of trial (which appears similar to the phrase 'interests of justice' in the new section 47(4) of the EA).[56] However, 'while the idea of fairness of trial may be conceived to include broader, non-epistemic considerations such as rights protection and the moral legitimacy of the criminal justice process, the cases seem to define fairness of trial more narrowly … not so much open-ended concepts such as justice or fairness (or indeed, "basic procedural fairness"), but, at bottom, reliability (of the evidence).'[57] Then there is the justification of the need to ensure minimum standards of law enforcement,[58] which is premised on 'the hope that the potential exercise of the court's exclusionary discretion may lead to law enforcement officers having less incentive to breach procedural safeguards' and that 'the judiciary has a duty to ... prevent the courts from abetting or endorsing flagrant improprieties'.[59] However, not only has this been rejected in other jurisdictions as the primary justification for the concept of judicial discretion to exclude evidence, it has been rejected in Singapore as well.[60]

Yet quite apart from finding a consistent and persuasive justification for the use of this discretion, the real problem brought about by the 2012 amendments is that the new section 47(4) uses language that is more likely to confuse than not. The full text of the subsection reads: 'An opinion which is otherwise relevant under subsection (1) shall not be relevant if the court is of the view that it would not be in the interests of justice to treat it as relevant.' This is confusing language because the preponderance of Singapore cases has (rightly or wrongly) translated the judicial discretion to exclude evidence into the test of weighing the probative value of the evidence against its prejudicial effect.[61] While the terms 'probative value' and 'prejudicial effect' are not without their own set of intractable (definitional and operational) problems,[62] why would the 2012 amendments introduce a test that bears no obvious relation to the longstanding test in the local cases and common law?[63] What

[55] 'The Judicial Discretion to Exclude Relevant Evidence' (n 18), 406.
[56] 'Reliability and Relevance as the Touchstones for Admissibility' (n 18), 544–45.
[57] 'The Judicial Discretion to Exclude Relevant Evidence' (n 18), 410–11.
[58] Ibid, 412–14.
[59] 'Reliability and Relevance as the Touchstones for Admissibility' (n 18), 546.
[60] *Muhammad bin Kadar* (n 31) [68].
[61] 'Reliability and Relevance as the Touchstones for Admissibility' (n 18), 539.
[62] 'The Judicial Discretion to Exclude Relevant Evidence' (n 18), 406–10; 'Revisiting the Similar Fact Rule' (n 38), 561–63. The main objections raised by some of the commentators are that there are no settled definitions for 'prejudice' and 'probative value' (see also Michael Hor 'Similar Fact Evidence in Singapore: Probative Value, Prejudice and Politics' [1999] *Singapore Journal of Legal Studies* 48, 50–1) and that the weighability of the two against each other is problematic.
[63] Indeed, even at English common law, the test has largely been superseded by section 78(1) of the Police and Criminal Evidence Act 1984 (c 60), which states: 'In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.'

does 'interests of justice' mean, and can it possibly mean anything more than what a court of law is supposed to uphold in any given case anyway, regardless of the context? And will not such a broad term contradict the inherent nature of the inherent power, which is supposed to be exercised only in exceptional and narrow circumstances? A further source of puzzlement was astutely pointed out by a Member of Parliament during the parliamentary debates leading to the 2012 amendments:

> [For the] new section 32(3), which gives the court a residual power to exclude hearsay evidence in the interest of justice. I would recommend that, instead of creating narrow safety valves in the provisions on hearsay, and also in the provisions on expert evidence in the new section 47(4), why not create a broad statutory power in a standalone provision of the Act allowing the court to exclude, in the interest of justice, any evidence that would otherwise be relevant and admissible under the provisions of the Act? This would put existing case law on a firm statutory footing.[64]

However, the Minister of Law replied as follows:

> [The discretion in section 47(4)] is in addition to the court's inherent jurisdiction to exclude prejudicial evidence … The courts' discretion to exclude hearsay or expert opinion evidence in the interest of justice, as set out in the Bill, is—and I emphasise this—in addition to its general power to exclude prejudicial evidence at common law. Such a general power stems from the courts' inherent jurisdiction, and our preference is to leave that unlegislated. Let us see how the courts exercise this power, whether it creates problems or whether it works well, and we will keep this under review.[65]

The Member of Parliament would probably not have found the reply from the Minister fully satisfactory. Indeed, why should the discretion be statutorily conferred only for hearsay and expert opinion evidence? How about similar fact evidence, character evidence, improperly obtained evidence, procedurally non-compliant evidence, or any evidence that may be relevant under the EA but potentially prejudicial? To return to an earlier point, the claim of a 'general power to exclude prejudicial evidence at common law', in all likelihood, was not made with the proper contemplation of the contentious scope and normative justification for this judicial discretion. And by saying that this discretion is 'in addition to [the courts'] general power to exclude prejudicial evidence at common law', does this mean that the test of 'in the interests of justice' is in addition to the common law test of probative value versus prejudicial effect, such that there is now a two-staged test? Finally, it is noteworthy that the LRC had actually proposed a more internally consistent (but nevertheless flawed) suggestion as regards section 47(4), but this was, for reasons not fully explicated, not taken up:

> This inclusionary rule should also be subject to an express exclusionary discretion permitting the court to exclude otherwise admissible evidence if

[64] *Singapore Parliamentary Debates Official Report* (n 6).
[65] Ibid.

> it is unfairly prejudicial, misleading or confusing or will lead to an undue waste of judicial time. However, as that exclusionary discretion will cut across all categories of admissible evidence and not just expert evidence, we have not suggested the shape that that exclusionary discretion should take …[66]

What, then, is a plausible solution to this unsatisfactory state of affairs? The ideal solution is to repeal the EA altogether—repealing section 2(2), which has created an uneasy interface between the EA and common law, would not be enough. This much-maligned statute, despite it representing a valiant endeavour to comprehensively codify the law of evidence in Singapore, has been ignored by the courts for decades, and even if cases subsequent to *Phyllis Tan* have attempted to reconcile the common law (including English law, which is constantly subject to reform) and the EA, sometimes they have come across as struggling to fit square pegs into round holes.[67] The LRC had also rightly pointed out that the EA continues to be built on certain normative assumptions that may be questioned in modern evidence law discourse, so there is really little reason to keep the EA.[68] But since the EA was amended only as recently as 2012, the possibility for repeal—as is the possibility for a complete makeover, as was done for the Criminal Procedure Code (CPC)[69]—is extremely low indeed. In the circumstances, one simply has to construct and adopt an interpretive framework for the EA that correctly identifies the conceptualisation and underpinning principles of the statute. To this end, and with specific regard to the question of whether a piece of evidence is relevant and admissible under the EA, it has been suggested that since the fact-finding process in Singapore is no longer by a jury but by a trial judge who has the professional expertise to properly consider and weigh evidence for its relevance and prejudice (something that the Ministry of Law also noted),[70] the following approach may be adopted as it is also more in line with the conceptualisation and principles of the EA:

> [I]nstead of using the balancing test (probative value versus prejudicial effect) to determine if a piece of evidence should be admitted or excluded; instead of asking whether there is any unfairness or injustice to be prevented; and instead of calling upon the court's residuary discretion and inherent powers to exclude otherwise admissible evidence, the appropriate (and narrower) question to ask after a piece of evidence is deemed relevant

[66] *Report of the Law Reform Committee on Opinion Evidence* (n 8), 4–5.

[67] For instance, in the context of similar fact rule, the Singapore courts continue to cite English cases that have long been superseded by statute, such as the Criminal Justice Act 2003. However, the courts do not even discuss such statutes in their similar fact rule decisions.

[68] *Report of the Law Reform Committee on Opinion Evidence* (n 8), 6–10. See also 'Remaking the Evidence Code' (n 30), 95–6.

[69] Criminal Procedure Code (Cap 68, 2012 Rev Ed) (Singapore). Up until 2012, this was known as the Criminal Procedure Code 2010 to disambiguate it from its predecessor.

[70] Consultation Amendments to the Evidence Act (n 10) [8]–[9]. See also *Wong Kim Poh* v. *Public Prosecutor* [1992] 1 SLR(R) 13 (SGCA) [14]; *Tan Chee Kieng* v. *Public Prosecutor* [1994] 2 SLR(R) 577 (SGCA) [8]; *Tan Meng Jee* v. *Public Prosecutor* [1996] SLR(R) 178 (SGCA) [48].

> (as determined by the [EA]) is whether that evidence is also reliable. The reliability of a piece of evidence will depend on the facts of each case, with references to the requirements established by statute (such as the [EA] and [CPC]). In contrast, the balancing test … will depend on vague notions of prejudicial effect, unfairness or injustice conceptualised broadly, and the hazy sense of when recourse to the court's inherent jurisdiction is acceptable … once the threshold of reliability is satisfied, the evidence is admissible—there is no residual discretion exercisable to deny admissibility of the evidence … As regards relevance, insofar as almost a third of the [EA] is devoted to relevancy provisions, it is clear that relevance is one of the touchstones of admissibility … As regards reliability, it is by no means a novel idea that it also forms a key foundation … Singapore courts routinely refer to reliability as the most crucial consideration when admitting evidence.[71] Should a court be unsure as to the precise reliability of a piece of evidence, it can always admit the evidence first and subsequently attach less weight to it if necessary … [This] acts as a more useful discretion for the judge than the balancing test …[72]

Indeed, the amended section 47(2) of the EA actually confirms that reliability is the twin to the touchstone of relevance when determining admissibility under the EA. That the subsection requires a witness can only be properly called an expert if he or she has 'such scientific, technical or other specialised knowledge based on training, study or experience' is an affirmation of the fundamental importance of reliability in the EA (and indeed, evidence law generally in many jurisdictions).[73] Happily, section 47(2) is also consistent with a long line of cases in Singapore that had supplemented the scope of admissibility under the old section 47 by holding that expert opinion evidence must be inherently and objectively reliable (as determined by the judge) before it can be considered relevant.[74] Not so happily, the new section 47(4), for the foregoing reasons, will create more problems than solve them.

[71] See also 'Reliability and Relevance as the Touchstones for Admissibility' (n 18), 547–49.

[72] 'The Judicial Discretion to Exclude Relevant Evidence' (n 18), 416, 419–20. Several advantages of adopting this paradigm were also highlighted: relevance and reliability is also the touchstone for the admissibility of statements made by the accused; there will no longer be any potential double standards between entrapment evidence (which cannot be excluded even by judicial discretion) and other types of improperly obtained evidence that is more prejudicial than probative (which can be excluded); and it obviates the need for a distinct test that applies to 'exclusionary' rules, since reliability is capable of being a basis for the 'exclusionary' rules as well as a test in and of itself. See also Chen Siyuan 'Dealing with Unreliable Evidence' [2011] *Singapore Law Watch Commentaries*; Chen Siyuan and Nicholas Poon 'The Inadmissibility of Unreliable Self-Inculpatory Statements' (2012) *Singapore Law Watch Commentaries*.

[73] See generally Michael Hor 'When Experts Disagree' [2003] *Singapore Journal of Legal Studies* 2, 241; Jeffrey Pinsler 'Expert's Duty to be Truthful in the Light of the Rules of Court' [2004] *Singapore Academy of Law Journal* 16, 407.

[74] See, for instance, *Saeng-Un Udom* v. *Public Prosecutor* [2001] 2 SLR(R) 1 (SGCA) [27]; *Dr Lo Sook Ling Adela* v. *Au Mei Yin Christina* [2002] 1 SLR(R) 326 (SGCA) [48]; *Sakthivel Punithavathi* v. *Public Prosecutor* [2007] 2 SLR(R) 983 (Singapore High Court) [75]; *Ong Pang Siew* v. *Public Prosecutor* [2011] 1 SLR 606 (SGCA) [66]–[73]; and *Eu Lim Hoklai* v. *Public Prosecutor* [2011] 3 SLR 167 (SGCA) [53]–[59].

(D) The Continued Applicability of the 'Ultimate Issue Rule'

So much for relevance and admissibility; we now move on briefly to a related but slightly distinct issue that could have been addressed by the 2012 amendments to section 47. It pertains to the 'ultimate issue rule'. The Ministry of Law was certainly aware of the importance of this rule when it said that the rationale for the expert opinion rule is the danger that fact-finders may 'place undue emphasis on expert opinions and abdicate their ultimate responsibility to draw their own conclusions on all the relevant facts';[75] so too the LRC Report, which identified the 'ultimate issue rule' as one of the main rules governing expert opinion evidence in some common law jurisdictions.[76] Interestingly, certain Indian commentators have taken the position that the rule is somehow covered by section 45 of the Indian EA—section 45 being the exact equivalent of section 47 of the EA before it was amended in 2012.[77] Be that as it may, the Singapore courts have never confronted this rule directly.[78] A recent Court of Appeal decision came rather close to doing this, where Judge of Appeal VK Rajah pointed out that:

> Expert evidence will not always offer a clear answer to every question before the court. This does not excuse a judge from making a crucial finding of fact. Ultimately, all questions—whether law or of fact—placed before a court are intended to be adjudicated by a judge and not by experts. An expert or scientific witness is there only to assist the court in arriving at its decision; he or she is not there to arrogate the court's functions to himself or herself.[79]

Although (as mentioned above) the 'ultimate issue rule' has largely been abandoned or modified in other common law jurisdictions, the rule is arguably still relevant in Singapore today. Apart from the passage cited above, in the particular context of Singapore, a logical impasse is reached when a judge is faced with conflicting expert opinion evidence that effectively goes toward answering an 'ultimate issue' but agrees with neither point of view: on the one hand, local case law dictates that he is 'restricted to electing or choosing between conflicting expert evidence' and cannot under any circumstance give his own opinion (though he is free to reject both opinions),[80] but on the other hand, he is expected to be the only (and final) arbiter of

[75] Consultation Amendments to the Evidence Act (n 10) [8].
[76] *Report of the Law Reform Committee on Opinion Evidence* (n 8), 2.
[77] *Ratalanlal & Dhirajlal's The Law of Evidence* (n 50), 376–77.
[78] *Evidence and the Litigation Process* (n 2), 292–93.
[79] *Eu Lim Hoklai* (n 73) [44]. The judge went on to add, however, in the same paragraph: 'Where the scientific evidence fails to provide a precise answer … the court must resort to the usual methods it employs in all other cases which do not require expert evidence: that is—namely—the sifting, weighing and evaluating the objective facts within their circumstantial matrix and context in order to arrive at a final finding of fact.'
[80] *Saeng-Un Udom* (n 73) [26].

the 'ultimate issue'.[81] Many common law commentators have also observed upward trends of fact-finders deferring disproportionately to expert opinion evidence, particularly in (but certainly not limited to) the fields of complex and/or emerging areas of science.[82] Would the 2012 amendments, which on the whole broadened (as was intended) the admissibility of expert opinion evidence, comport with such fears?[83] If so, did Parliament then think that further statutorily confirming the abolition of the 'ultimate issue rule' would go one step too far in broadening admissibility, at least at this point in time? Whichever the case, it seems that it has avoided deciding conclusively on (or even addressing) the matter for now, unlike the legislature in Australia, which had repealed the rule via section 80(a) of its Evidence Act 2011,[84] and in England, which had also repealed the rule (for civil proceedings) via section 3 of the Civil Evidence Act 1972[85] and has progressively cast doubt on the rule in criminal proceedings over the last few decades.[86]

[81] See also Scott Brewer 'Scientific Expert Testimony and Intellectual Due Process' [1998] *Yale Law Journal* 107, 1535, 1679–80: '[T]here is a structured reasoning process that a nonexpert judge … must use in an effort to take account of scientific expert testimony in the course of reaching a legal decision about … guilt … When one attends carefully to the precise steps of the reasoning process, one sees that there are crucial steps that a nonexpert judge … is, in a great many instances, not capable of performing in an epistemically nonarbitrary manner. Specifically, when competing scientific experts are, for all the nonexpert knows, fairly evenly matched in credentials, reputation, and demeanor, and when no generally accessible rational criteria … break the 'tie' … then a nonexpert is not capable of choosing among the competing experts in an epistemically nonarbitrary way.'

[82] See, for instance, *Criminal Evidence* (n 21), 502–9; *Ratalanlal & Dhirajlal's The Law of Evidence* (n 50), 376–77.

[83] In Singapore, there was even a recent debate on the 'ultimate issue rule': see Andy Ho 'Keeping an Eye on Expert Witnesses', *The Straits Times*, 19 January 2013 ('the court has repeatedly stressed a high degree of deference to its scientific findings and an unwillingness to scrutinise them … This hands-off approach of appeals courts is indeed the norm in most common law countries … The traditional rationale for this approach is that the lower court sees all witnesses in person, so its judge is best positioned to assess their credibility. But even if this were so, the standard for admitting an expert witness is very lax … Given that a judge is unlikely to be also a scientist, the one admissible as a science expert need not be very highly qualified, in theory … In practice, once admitted as an expert, almost any evidence he offers becomes admissible. His bare say-so could convict, which would be a miscarriage of justice if the highest court will not review the science on appeal') and Zaheer Merchant 'Easing Concerns Over Expert Views', *The Straits Times*, 25 January 2013 ('Expert evidence is a complex area of the law. The Singapore courts are keenly aware that expert evidence should not deal with the "ultimate issue" … Any expert evidence to be admissible in court and at trial first has to pass fairly stringent admissibility criteria, which finds its substratum in statute … supplanted by common law, and other procedural challenges. Having been admitted, the evidence is then tested by rigorous cross-examination, aside from being evaluated against other experts' views. Experts also clearly have a duty not to the party who calls them to testify, but predominantly to the court. The court evaluates the weight to be placed on the expert evidence in its decision. It does not simply make a decision based solely on or by reason of an expert opinion … In Singapore, the High Court and Court of Appeal … recognise and are able to distinguish the roles and value of expert evidence').

[84] Section 80(a) states: 'Evidence of an opinion is not inadmissible only because it is about a fact in issue or an ultimate issue.'

[85] Section 3(1) states: 'where a person is called as a witness in any civil proceedings, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence.' Section 3(3) states: 'In this section 'relevant matter' includes an issue in the proceedings in question.'

[86] *Cross & Tapper on Evidence* (n 21), 538–40.

3. Concluding Remarks

In this article, I have argued that the 2012 amendments to the expert opinion provisions in the EA may have raised more questions than answered them. It is likely that Parliament had not properly appreciated the conceptualisation, structure, and principles of the EA—particularly with regard to relevancy and admissibility—before it passed the amendments. This has culminated in the introduction of a completely new test for excluding relevant expert opinion evidence, and this is without first mentioning the problem of confining this test to expert opinion and hearsay evidence. Parliament has also passed on the opportunity to clarify the law on the 'ultimate issue rule', and though this is perhaps mitigated by trends elsewhere in other common law jurisdictions, it does underscore the unique importance attached to expert opinion evidence and confirm an increasingly popular philosophy towards it: Expert opinion evidence is increasingly important and necessary, so the courts should be allowed to let in as much of it as possible; after all, the courts—long stripped of layperson juries—have always been fully equipped to weigh the evidence appropriately, to ensure the justice of each case.